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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 171031999-8355-02]

RIN 0648-BH40

Fisheries Off West Coast States; West Coast Salmon Fisheries; Management Measures to Limit Fishery Impacts on Sacramento River Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to approve new fishery management measures to limit incidental catch of endangered Sacramento River winter-run Chinook salmon (SRWC) in fisheries managed under the Pacific Fishery Management Council's (Council) Pacific Salmon Fishery Management Plan (FMP), as recommended by the Council for use in developing annual management measures beginning in 2018. These new management measures replace existing measures, which have been in place since 2012, with updated salmon abundance modeling methods that utilize the best available science and address concerns that the existing measures were overly conservative.

DATES: This final rule is effective [*insert date of filing with the Office of the FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at (206) 526-4323.

SUPPLEMENTARY INFORMATION:

Background

Ocean salmon fisheries off the coasts of Washington, Oregon, and California are managed by the Council and NMFS according to the FMP. The FMP includes harvest controls that are used to manage salmon stocks sustainably. The FMP also requires that the Council manage fisheries consistent with “consultation standards” for stocks listed as endangered or threatened under the Endangered Species Act (ESA) for which NMFS has issued biological opinions. At its November 2017 meeting, the Council adopted a preferred alternative for new management measures to limit fishery impacts to endangered SRWC, including a harvest control rule, to replace measures that have been in place since 2012. The Council developed these new management measures over a two-year period that included discussion at several public meetings, which provided opportunity for public comment. These new management measures include updated salmon abundance modeling methods that utilize the best available science and address concerns that the existing measures were overly conservative. The Council transmitted their recommendation to NMFS on December 6, 2017. NMFS published a proposed rule on February 22, 2018 (83 FR 7650) and accepted comments through March 9, 2018. The rationale for and effects of the rule are described in more detail in the proposed rule.

The management measures approved in this final rule are unchanged from the proposed rule and consist of two parts. Part one is the continued use of season and size restrictions that were included in the 2012 management measures (see Table 1, below). Part two is a harvest control rule, recommended by the Council, which uses juvenile survival (*i.e.*, fry to the end of age-two in the ocean) to model a forecast of age-three

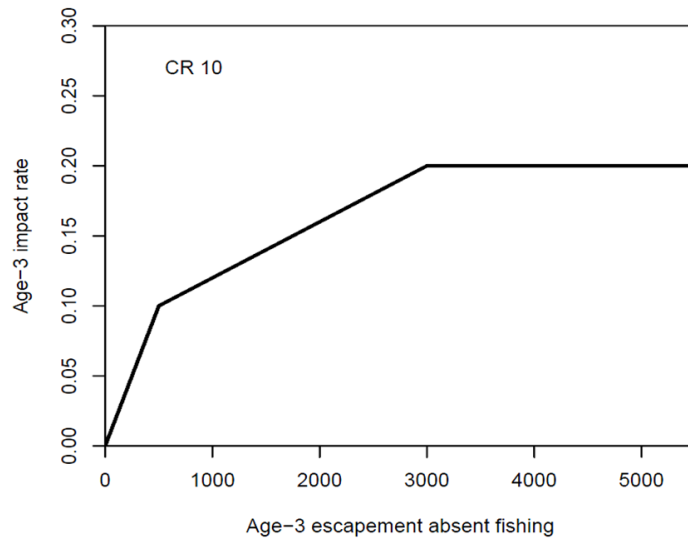
escapement absent fishing (escapement). The model used is a modification of the approach described in Winship *et al.* (2014) and is detailed in O'Farrell *et al.* (2016). The harvest control rule uses a forward-looking forecast rather than the previously used hind-cast methodology. The new harvest control rule sets the maximum allowable age-three impact rate based on the forecast escapement. At escapement above 3,000, the allowable impact rate is fixed at 20 percent. At escapement between 3,000 and 500, the allowable impact rate declines linearly from 20 percent to 10 percent. At escapement between 500 and 0, the allowable impact rate declines linearly from 10 percent to 0 percent, thus providing fishing opportunity at all levels of SRWC abundance. See Figure 1.

Table 1. Fishing Season and Size Restrictions for Ocean Chinook Salmon Fisheries, South of Point Arena, California.

| Fishery | Location | Shall open no earlier than | Shall close no later than | Minimum size limit (total length ¹) shall be |
|--------------|--|-----------------------------------|------------------------------------|--|
| Recreational | Between Point Arena and Pigeon Point | 1 st Saturday in April | 2 nd Sunday in November | 20 inches |
| | Between Pigeon Point and the U.S./Mexico border | 1 st Saturday in April | 1 st Sunday in October | |
| Commercial | Between Point Arena and the U.S./Mexico border [†] | May 1 | September 30 [†] | 26 inches |
| | [†] Exception: Between Point Reyes and Point San Pedro, there may be an October commercial fishery conducted Monday through Friday, but shall end no later than October 15. | | | |

¹Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail (50 CFR 660.402).

Figure 1. The Harvest Control Rule (CR10), Recommended by the Pacific Fishery Management Council, for Management of Ocean Salmon Fisheries that Affect Sacramento River Winter-run Chinook Salmon (SRWC Workgroup 2017).



Response to Comments

NMFS accepted comments on the proposed rule to approve new fishery management measures through March 9, 2018. We received no comments on the proposed rule. NMFS is not proposing any changes from the proposed rule.

References Cited

O’Farrell, M., N. Hendrix, and M. Mohr. 2016. An evaluation of preseason abundance forecasts for Sacramento River winter Chinook salmon. Pacific Fishery Management Council Briefing Book for November 2016, 35p.

SRWC Workgroup. 2017. Further evaluation of Sacramento River winter Chinook control rules, dated October 18, 2017. Pacific Fishery Management Council Briefing Book for November 2017, 9 p.

Winship, A. J., M. R. O’Farrell, and M. S. Mohr. 2014. Fishery and hatchery effects on an endangered salmon population with low productivity. Transactions of the American Fisheries Society 143, 957–971

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the Assistant Administrator for Fisheries (AA) has determined that this final rule is consistent with the Pacific Salmon Fishery Management Plan, the MSA, and other applicable law.

The actions taken through this final rule have been analyzed in an environmental assessment, under the National Environmental Policy Act (NEPA). The West Coast Regional Administrator determined that the actions of this final rule will not significantly impact the quality of the human environment and has signed a finding of no significant impact.

This rule has been determined to be not significant for purposes of Executive Order 12866.

As required by section 603 of the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was prepared. The FRFA describes the economic impact this final rule will have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS.

Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (80 FR 81194, December 29, 2015). This standard is only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA.

NMFS' small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing is \$11 million in annual gross receipts. This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses (50 CFR 200.2; 13 CFR 121.201).

The final rule approves a harvest control rule that specifies the annual amount of fishery impact that will be allowed on ESA-listed SRWC and, thereby, affect the fishing opportunity available in the area south of Point Arena, CA. This will affect commercial

and recreational fisheries. Using the high from the last 3 years, 153 commercial trollers are likely to be impacted by this rule, all of whom would be considered small businesses. The 16-25 commercial vessels who have greater than 75 percent of their annual revenue from Chinook salmon south of Point Arena would be most impacted by this rule. Charter license holders operating south of Point Arena will be directly regulated under the updated harvest control rule. The number of license holders has fluctuated with harvest levels, varying from 70 in 2010 to 93 in 2014. Of these, 20-50 vessels could be considered “active”, landing more than 100 salmon in the year. The final rule impacts about 90 charter boat entities, about 50 of whom were “active” in peak years (2013-2014). In summary, this rule will directly impact about 250 entities made up of commercial and charter vessels, with about 75 of these highly active in the fishery and likely to experience the largest impacts, in proportion to their total participation.

The action includes a *de minimis* provision and would allow impacts at all non-zero forecast abundance. Because of this feature, this action is unlikely to result in fishery closure in the analysis area. The selected alternative also provides increased certainty to operators over the status quo, in which the Council has elected lower impact rates than specified by the current control rule. Therefore, this action would be expected to have a positive impact of low magnitude on economic benefits to fishery-dependent communities that would vary year-to-year, but not likely to be significant.

Commercial trollers and charter operators face a variety of constraining stocks. In no year has SWRC been the only constraining stock. Entities are constrained by both ESA-listed and non-listed species; the years that had the most constrained fisheries in the last decade were 2008 and 2009, when fisheries in the analysis area were closed to limit

impacts to Sacramento River fall Chinook, not an ESA-listed species, rather than the ESA-listed species SRWC. Thus, while entities will likely continue to face constraints relative to fishing opportunities, because the action is expected to provide low-positive benefits to both commercial and charter operators, NMFS does not expect the rule to impose significant negative economic effects.

This final rule does not establish any new reporting or recordkeeping requirements. This final rule does not include a collection of information. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

This action is the subject of a consultation under section 7 of the ESA. NMFS has prepared a biological opinion on the effects of this action on SRWC. The biological opinion concluded that the action does not jeopardize SRWC. This action is not expected to have adverse effects on any other species listed under the ESA or designated critical habitat. This action implements a new harvest control rule to limit impacts on SRWC from the ocean salmon fishery and will be used in the setting of annual management measures for West Coast salmon fisheries. NMFS has current ESA biological opinions that cover fishing under annual regulations adopted under the FMP on all ESA-listed salmon species. Some of NMFS past biological opinions have found no jeopardy, and others have found jeopardy, but provided reasonable and prudent alternatives to avoid jeopardy. The annual management measures are designed to be consistent with the biological opinions that found no jeopardy, and with the reasonable and prudent alternatives in the jeopardy biological opinions.

The AA finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness. This rule implements changes in management measures to

limit incidental catch of endangered SRWC in fisheries managed under the Council's FMP; these management measures will be used in setting ocean salmon fisheries, beginning in 2018. As previously discussed, the actions in this rule were developed through the Council process. The actions were adopted by the Council over multiple Council meetings and the final recommendation was transmitted to NMFS in December 2017. Subsequently, NMFS completed a draft NEPA analysis to accompany the proposed rule. In order to complete this work and include a meaningful public comment opportunity on the proposed rule, this rulemaking could not be completed sooner. The Council developed 2018 ocean salmon fishery management measures at their April 5-11, 2018 meeting based on the new management framework described in this rule. Delaying the effectiveness of the actions in this rule by 30 days would complicate NMFS' ability to make determinations regarding those ocean salmon fishery management measures that manage fishery impacts on SRWC consistent with the best available science prior to May 1, 2018, when significant salmon fisheries start. Because delaying the effectiveness of this rule would mean delaying the effectiveness of salmon fishery management measures based on the best available science, it would undermine the purposes of this agency action and the requirements of the Magnuson-Stevens Act (MSA). Specifically, the management framework described in this rule relies on new abundance forecasting methodology that is forward-looking and thus takes into account environmental conditions that could affect abundance in the future. This is the best available science on which to base decisions about fishery impacts on SRWC.

This final rule was developed after meaningful collaboration with West Coast tribes, through the Council process. Under the MSA at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction. No tribes with Federally recognized fishing rights are expected to be affected by this rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 23, 2018.

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National Marine Fisheries Service.

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